

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
ASHEVILLE DIVISION  
1:13cv119**

<b>NORTH AMERICAN ROOFING</b>	)	
<b>SERVICES, INC., and CARLISLE</b>	)	
<b>CONSTRUCTION MATERIALS</b>	)	
<b>INCORPORATED,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	<b>ORDER</b>
	)	
<b>BPP RETAIL PROPERTIES, LLC,</b>	)	
	)	
<b>Defendant.</b>	)	
	)	

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Plaintiffs brought this action against Defendant BP Retail Properties, LLC (“Defendant”) asserting claims for declaratory judgment pursuant to the North Carolina Declaratory Judgment Act. After Defendant removed the action to this Court, Defendant filed two Rule 12 Motions to Dismiss [# 5 & # 7]. In addition, Defendant has filed a Motion to Strike [# 17] the affidavit of Christopher Takoch, a Motion for Leave to File Supplement to Motion to Dismiss [# 28]. Meanwhile, Plaintiff filed a Motion for Discovery Conference [# 30]. Upon a review of the parties’ pleadings, the relevant legal authority, and the record in this case, the Court **DIRECTS** the parties as follows:

(1) The Court **DENIES** the Motion for Discovery Conference [# 30].

The joinder of the issues in this case does not occur until the District Court rules on the pending Motions to Dismiss based, in part, on this Court's Memorandum and Recommendations. Discovery will not proceed in this case until after the Court resolves the pending Motions to Dismiss.

(2) The Court **DENIES** the Motion for Leave to File Supplement to Motion to Dismiss [# 28]. The parties have already inundated this Court with pleadings and exhibits and no additional exhibits are needed to resolve the issues before the Court. Moreover, the Court is capable of accessing the docket of the parallel proceedings in the District of Puerto Rico on if necessary.

(3) The Court **DENIES** the Motion to Strike [# 17]. The Court is capable of reviewing the affidavit of Takoch and determining whether the information contained therein is relevant or admissible and applying the appropriate weight in ruling on the pending Motions to Dismiss.

(4) Finally, this Court imposes a page limit on legal briefs of twenty-five pages. LCvR 7.1(D). In an attempt to bypass this Court's Local Rules, Defendant filed two separate Rule 12 motions on the same day with two separate legal memorandums. Although the Court would ordinarily strike the second motion from the record, the Court will decline to do so in this case since the motions are both fully briefed and have been pending for several months.

Signed: October 4, 2013

Dennis L. Howell

Dennis L. Howell  
United States Magistrate Judge

